

UNITED STATES COURT OF APPEALS

Filed 10/10/96

TENTH CIRCUIT

DANNY CAMPBELL, SR.,

Plaintiff - Appellant,
v.

JACK COWLEY and MARCIA
HANES,

Defendants - Appellees.

No. 96-6053
(D.C. No. CIV-95-2022-R)
(Western District of Oklahoma)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **KELLY** and **LUCERO**, Circuit Judges.

Appellant, Danny Campbell, appeals an order dismissing his 42 U.S.C. § 1983 claim as frivolous under 28 U.S.C. § 1915(d). He alleged that the defendants at the Joseph Harp Correctional Center conspired to violate his constitutional rights in 1992 and they did not answer several grievances that he filed that year. A magistrate judge recommended dismissing the complaint as frivolous under 28 U.S.C. § 1915(d), because the “complaint is virtually identical

*The case is unanimously ordered submitted without oral argument pursuant to Fed. R. App. P. 34(a) and 10th Cir. R. 34.1.9. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

to and in fact consists largely of a photocopy of the complaints [Campbell] filed in two other cases in this district.” R. 4 at 2. Campbell objected to the recommendation and urged the district court to reach the merits, despite “the couple of times, I’ve presented this case.” R. 5 at 2. The district court reviewed the case de novo and adopted the recommendation to dismiss the case as frivolous under § 1915(d). We review such a dismissal for an abuse of discretion. Denton v. Hernandez, 504 U.S. 25, 33-34 (1992).

As a preliminary matter, we note that Campbell has been allowed to proceed with this appeal in forma pauperis, without payment of costs or fees. While incarcerated, Campbell has filed three § 1983 complaints in forma pauperis that were dismissed as frivolous under § 1915(d), one of which is the subject of this appeal and the other two, the suits which the district court concluded were nearly identical to the present complaint. See Campbell v. Cowley, No. CIV-92-268-R (W.D. Okla. Mar. 11, 1992); Campbell v. Cowley, No. CIV-93-577-R (W.D. Okla. May 24, 1993), aff’d, 13 F.3d 404 (10th Cir. 1993). The Prison Litigation Reform Act of 1995 generally prevents a prisoner from proceeding in forma pauperis “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal . . . that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim

upon which relief may be granted.” The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, §§ 804-05, 110 Stat. 1321, 1374-75 (amending 28 U.S.C. § 1915). That Act does not apply to the present appeal, however, because Campbell filed his notice of appeal before the Act was signed into law. White v. Gregory, 87 F.3d 429, 430 (10th Cir. 1996). We are bound by that decision.

After reviewing the entire record and Campbell’s brief on appeal, we are unable to conclude that the district court abused its discretion in dismissing the complaint. We affirm the dismissal of the complaint for the reasons stated by the district court in its order dated January 18, 1996.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Carlos F. Lucero
Circuit Judge